

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

R.H. Donnelley Inc. d/b/a Dex One)	
as agent for Illinois Bell Telephone Company)	
)	
)	ICC Docket Number 11-0668
)	
Petition for Variance of Section 735.180)	
of the Illinois Administrative Code.)	

**REPLY BRIEF ON EXCEPTIONS
OF THE
PEOPLE OF THE STATE OF ILLINOIS**

The People of the State of Illinois

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July 20, 2012

The People of the State of Illinois, by Attorney General Lisa Madigan, (the People), pursuant to Part 200.830 of the Rules of Practice of the Illinois Commerce Commission (“the Commission”), 83 Ill.Admin.Code Part 200.830, and the schedule established by the Administrative Law Judge, hereby submit the following Reply Brief on Exceptions in response to the Briefs on Exceptions filed by Dex One and the Staff of the Commission on July 13, 2012.

Initially, the People reiterate the arguments made in its briefs and Brief on Exceptions and reassert that Dex One failed to satisfy the burden of proving the conditions precedent for the Commission to grant its requested variance. AG Initial Brief at 2; AG Reply Brief at 3-4; AG Brief on Exceptions (hereinafter “BOE”) at 2. In addition, the People support Staff’s proposed exceptions and the arguments presented in support of those exceptions. Finally, the People urge the Commission to reject Dex One’s proposed exceptions because they are not rooted in record evidence.

I. DEX ONE’S EXCEPTIONS ARE IMMATERIAL BECAUSE THERE IS NO EVIDENTIARY BASIS FOR GRANTING DEX ONE’S REQUESTED WAIVER

The People assert that Dex One’s proposed exceptions are immaterial and should be rejected because they presuppose the granting of the requested waiver where the record contains no evidentiary basis for the Commission to do so. Dex One is required to prove that that no customers will be harmed by its requested waiver and that the rule at issue (83 Ill. Admin. Code 735.180(a) and (d)) is unreasonable and unnecessarily burdensome. As argued in the People’s Brief on Exceptions, Dex One has not met that standard. AG BOE at 2. Dex One’s proposed exceptions do not alter the insufficient evidence in the record to support granting a waiver; and Dex One’s attempts to clarify the record via its exceptions do not otherwise elevate the record to a point of meeting this burden. Dex One’s exceptions, therefore, should be rejected.

A. Dex One’s First Exception Fails to Clarify the Record or Suggest a Reasonable Substitute for Dex One’s Regulatory Requirements

In its first exception, Dex One makes a transparent, and ultimately futile, attempt to demonstrate compliance with its obligation to provide vital information, including residential telephone numbers, as mandated by the existing regulations and the Order in Docket 07-0434. Dex One seeks to make the Proposed Order “clear” that some form of “core directory” will still be delivered in a saturation manner. Dex One BOE at 1-2. However, the “core directory” that Dex One will provide does not include the required residential listings. In its exception, Dex One effectively asserts that its revenue-generating Yellow Pages should be a substitute for the important information contained in the residential white page directories that it is obligated to deliver, providing all of the information *except for* the residential listings. *Id.* at 2. As previously argued, the revenue-generating Yellow Pages are not an acceptable substitute for the White Pages residential listings.

As the People, and Staff, have argued, there is also no evidentiary basis for removing the white pages directories from (a) the Neighborhood Directories that will continue to be delivered in Chicago and (b) the existing “Core Directories” that will continue to be delivered outside of Chicago. AG BOE at 5; Staff BOE at 3. As argued in the People’s Brief on Exceptions, Dex One has a pre-existing distribution and production network that it plans on continuing to utilize. AG BOE at 7. Dex One’s proposed exception highlights this fact, and further proves that the rule is not unreasonable or unnecessarily burdensome. In fact, Dex One’s insistence that it will continue to deliver the revenue-generating directories simply highlights that Dex One is not burdened by this rule. Based on the foregoing, Dex One’s proposed exception should be rejected.

B. Dex One’s Second Exception Fails to Clarify the Record and Fails to Establish that Customers Will Not Be Harmed

In Dex One’s second exception, Dex One seeks to further clarify its position by noting that it does not plan to expand its program into other markets for two years and only after a stand-alone copy of the residential White Pages is available for that market. Dex One BOE at 2. Dex

One also notes that it “would consider extending the program on a market-by-market basis based on the needs and usage patterns of customers in different markets.” Dex One BOE at 2.

This exception presumes that Dex One has proven that customers will not be harmed by the removal of the white pages from the regular directories. However, the People reassert that Dex One failed to provide any customer-specific evidence as to the needs or usage patterns of customers in any Illinois market, and, therefore, the exception should be rejected. As argued in previous briefs by both the People and Staff, Dex One failed to provide any Illinois-specific evidence to support its claim that no Illinois residents would be harmed by the waiver. AG BOE at 5, Staff BOE at 3. Staff noted that in Docket 07-0434, Dex One retained a research consultant to determine whether the waiver would impact Chicago customers, but has not even attempted to make any efforts to obtain customer-specific data in this docket. Staff BOE at 3. The People also note that Staff’s evidence showed that up to 20% of Illinois residents do not own a computer, meaning that 20% of customers could be harmed by discontinuing the saturation delivery of the Neighborhood Residential Directories. The People agree with Staff that Dex One’s propounded evidence “does not in any way address or satisfy the Illinois rule.” Staff BOE at 3. Finally, as argued in the People’s Brief on Exceptions, Dex One has failed to draw any reliable correlation between the customer response experience from Docket 07-0434 and the need for a residential white pages directory. See AG BOE at 5.

Dex One’s proposed exception does not address any of these arguments and does not attempt to explain why it never provided Illinois-specific customer data. As the People argued in its Reply Brief and again in the Brief on Exceptions, “the reality of the Illinois marketplace that electronic media, while perhaps pervasive among some segments of the population, is not ubiquitous.” AG Reply Brief at 2. Without the white pages directory, vulnerable customers may

ultimately resort to some form of directory assistance at an additional cost. Dex One's exception fails to address this serious concern, and should, therefore, be rejected by the Commission.

C. Dex One's Clarifications Are Immaterial Where Dex One Has Not Met Its Burden that the Waiver Should be Granted

The People disagree with Dex One's proposed clarifying language. Dex One BOE at 3. Dex One has not met its burden of proving that no harm will come to Illinois customers and that the rule is unnecessary or burdensome. Therefore, the particulars of Dex One's proposed roll-out plan, proposed extension into other markets, notice prior to extending the program, and the proposed content of the Core Directories, are immaterial and premature. Next, the People find Dex One's beliefs as to affinity directories inappropriate to be included in a Commission Order. Dex One BOE at 3. Finally, Dex One offers clarifications that customers may receive up to 5 directories, but not automatically, and that customers can order residential White Pages via telephone or on-line. Although these statements are supported by the record, the People do not find it necessary to include them in this Commission Order.

II. The People Support the Exceptions Raised by Commission Staff

In its first exception, Staff indicates that there is a "fundamental misapprehension of its position" and that there is "indeed a contested issue" related to the extension of the waiver granted in Docket No. 07-0434. Staff BOE at 1-2. The People support Staff's exception and request that Staff's proposed language be included in the Final Order.

In its second exception, Staff raises concerns with the Proposed Order's treatment of the waiver request outside the City of Chicago. Staff BOE at 4. The People, again, support Staff's arguments related to this exception and request that Staff's proposed language be included in the Final Order.

Finally, the People agree with the conditions imposed in Staff's Brief on Exceptions. In addition, the People would incorporate the notice provisions raised in the People's Brief into Staff's conditions. AG BOE at 9. In the Brief on Exceptions, the People argued that the Proposed Order outlines no notice requirements and proposed certain requirements for notice. *Id.* The People reassert the necessity of having strong notice provisions and propose including such provisions with Staff's proposed customer surveys for a period of no less than two years, in order to fully inform Illinois residents of the surveys and their ability to voice their opinion as to whether they want to continue receiving residential directories.

III. Conclusion

Wherefore, the People urge the Commission to modify the Proposed Order consistent with the arguments presented above and as in the People's Brief on Exceptions.

Respectfully Submitted,

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